

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1368 of 1986

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CHIMANLAL D BHATIYA

Versus

KESHAVLAL N SHAH

Appearance:

MS PJ DAVAWALA for Petitioner

MR KV SHELAT for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendant-tenant, who was sued by the respondent-landlord for a decree of eviction.
2. The landlord had sued for a decree of eviction on

three grounds viz. (i) arrears of rent of more than six months, (ii) nuisance committed by the tenant within the meaning of section 13(1)(c) of the Rent Act and (iii) breach of the conditions of terms and conditions of tenancy by not keeping the leased premises in good condition.

2. The trial court, after appreciating the evidence on record, dismissed the suit of the landlord on the ground of nuisance within the meaning of section 13(1)(c), dismissed the suit on the alleged ground that the tenant had committed breach of the terms and conditions of tenancy, but passed a decree for eviction against the tenant on the ground that he was in arrears of rent of more than six months and was, therefore, liable to be evicted under the provisions of section 12(3)(a) of the Rent Act.

3. The tenant thereupon challenged the decree of eviction by way of an appeal. The said appeal was dismissed and hence the present revision.

4. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

5. The facts which are relevant for the purpose of the present revision are extremely narrow in compass and in any case such facts are indisputable, looking to the documentary evidence on record.

6. The lower appellate court has found that once upon a time (prior to the filing of the present suit), the landlord had alleged that the defendant-tenant was in

arrears of rent for more than six months and therefore this landlord had filed a suit against this tenant being Regular Civil Suit No.76/73. The certified copy of the judgement in that suit is at Exh.44 in the present suit. This judgement discloses that although the decree for possession was refused, the trial court in that suit had passed a decree against the defendant for payment of arrears of rent at the rate of Rs.10/- per month from the date of that suit. Furthermore, the standard rent of the suit premises had been determined in that suit at Rs.9/per month plus one rupee by way of permissible increases by the way of tax i.e. Rs.10/- in all. The tenant had filed an appeal which was dismissed for default, which was sought to be restored by filing a Civil Misc. Application and the appeal was restored by the grant of such application. Even after restoration the appeal was not attended to, and ultimately the same came to be dismissed with costs by judgement and order dated 30th November 1976. It is, therefore, incontrovertible that there is a decree against the present defendant in respect of the arrears of rent on the date of that suit.

7. In the present suit the plaintiff has deposed at Exh.41, given the factual details as to the total amount of rent due (after giving credit for the amount deposited by the tenant after the earlier decree). It is an admitted position that inspite of the statutory notice, the tenant has neither paid the landlord nor made any deposit in court within the prescribed period of 30 days. There is no question of any dispute as to standard rent since the same was already fixed by the court in the earlier proceedings between the same parties. The lower appellate court has noted from the evidence on record that "even thereafter also the defendant has not regularly paid the rent from time to time till the hearing of this appeal." The lower appellate court has further observed that "the defendant had thereafter been given opportunity from time to time to pay the rent, but he had failed and neglected to pay the rent to the plaintiff or to deposit the same in the court". In the premises aforesaid, the lower appellate court was amply justified in concluding that the decree passed by the trial court under section 12(3)(a) of the Bombay Rent Act is entirely justified.

8. In view of these facts on record, learned counsel for the petitioner-tenant is unable to satisfy me as to the existence of any ground on which interference with the concurrent judgements and decrees passed by the two courts below, would be justified. This revision is,

therefore, required to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

9. At this stage learned counsel for the petitioner-tenant submits that some time may be granted to vacate the suit premises. For this purpose, it is directed that the impugned judgement and decree for eviction of the tenant shall not be executed upto 15th September 2000.

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